

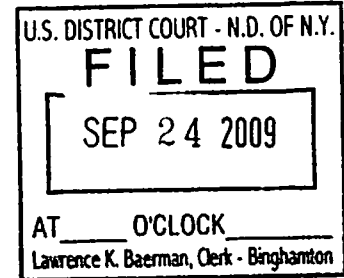
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

=====

TRAVCO INSURANCE COMPANY,

Plaintiff,

ORDER



v.

BRIAN D. MCGILL and HEATHER A. MCGILL
And ROBERT PIGEON, III and MARISSA PIGEON,

3:08-cv-00430 (TJM-DEP)

Defendants.

=====

Plaintiff TRAVCO INSURANCE COMPANY, having duly moved pursuant to Federal Rule 56 for summary judgment declaring that it had no obligation to defend or indemnify defendants BRIAN D. MCGILL and HEATHER A. MCGILL with regard to claims asserted by and litigation commenced by defendants ROBERT PIGEON, III and MARISSA PIGEON relative to an incident occurring on November 10, 2007 and defendants BRIAN D. MCGILL and HEATHER A. MCGILL having cross-moved for summary judgment and defendants ROBERT PIGEON, III and MARISSA PIGEON having joined in the Cross-Motions by letter brief, and the Motions having come on to be heard before this Court on September 14, 2009, and Kenney Shelton Liptak Nowak LLP, Theresa J. Puleo, Esq., of counsel, appearing in support of the Motion for TRAVCO INSURANCE COMPANY, Aswad and Ingraham, Richard Aswad, Esq., of counsel, appearing in opposition to the Motion and in support of the Cross-Motion for BRIAN D. MCGILL and Hinman, Howard & Cottell, James Chivers, Esq., of counsel, appearing in opposition to the Motion and in support of the Cross-Motion for HEATHER A. MCGILL, and no appearance having been made at the Motion Term on behalf of ROBERT PIGEON, III and MARISSA PIGEON

NOW, upon reading the Notice of Motion dated July 31, 2009, the Statement of Material Facts submitted by TRAVCO INSURANCE COMPANY, the Affirmation of Theresa J. Puleo with

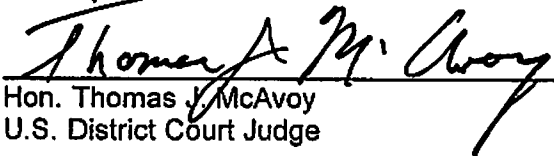
attached exhibits dated July 31, 2009, the Memorandum of Law submitted by TRAVCO INSURANCE COMPANY, the Brief In Opposition and Reply submitted by TRAVCO INSURANCE COMPANY dated September 3, 2009, the Notice of Cross-Motion dated August 29, 2009 submitted by BRIAN D. MCGILL, the Statement of Material Facts submitted by BRIAN D. MCGILL, the Response to Plaintiff's Statement of Material Facts submitted by BRIAN D. MCGILL, the Affidavit of Richard N. Aswad, Esq., in Opposition to Plaintiff's Motion and in Support of the Cross-Motion of BRIAN D. MCGILL, with exhibits annexed thereto, sworn to on August 26, 2009, the Memorandum of Law submitted by BRIAN D. MCGILL, the Notice of Cross-Motion of HEATHER A. MCGILL dated August 28, 2009, the Affidavit of HEATHER A. MCGILL sworn to on August 26, 2009 in Opposition to Plaintiff's Motion and in support of the Cross-Motion, the Statement of Material Facts submitted by HEATHER A. MCGILL, the Response to Plaintiff's Statement of Material Facts submitted by HEATHER A. MCGILL, the Affidavit of James L. Chivers, Esq., in Opposition to Plaintiff's Motion for Summary Judgment and in Support of the Cross-Motion sworn to on August 28, 2009, and the Memorandum of Law submitted by HEATHER A. MCGILL and the letter brief of Weber, Gallagher, Simpson, Stapleton, Fires and Newby dated August 27, 2009, on behalf of ROBERT PIGEON III and MARISSA PIGEON, it is hereby

ORDERED that the Cross-Motions of the defendants are denied in their entirety, and it is further

ORDERED that the plaintiff's Motion for Summary Judgment is granted and it is hereby declared that plaintiff TRAVCO INSURANCE COMPANY has no obligation to defend or indemnify BRIAN D. MCGILL and HEATHER A. MCGILL for the claims and litigation arising out

of a November 10, 2007 incident under a policy issued by TRAVCO INSURANCE COMPANY to
HEATHER A. MCGILL and BRIAN D. MCGILL and designated Policy Number 981359586-633-1.

9/23/09


Hon. Thomas J. McAvoy
U.S. District Court Judge